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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACKIE TIDWELL,
Plaintiff/Petitioner,

vs.
ZHEJIANG JIANDI TRADING &
INDUSTRIAL
CO., LTD.,
Defendant/Respondent,

and

TV PRODUCTS USA, INC., WALMART
STORES, INC., BIG LOTS STORES, INC.,
Garnishees.

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CIVIL ACTION NO. 3:13-cv-5701

**ANSWER AND AFFIRMATIVE
DEFENSES OF BIG LOTS STORES, INC.
TO VERIFIED PETITION FOR SPECIAL
PROCEEDING AND TURNOVER OF
JUDGMENT DEBTOR'S PROPERTY
HELD BY GARNISHEE
JURY TRIAL DEMANDED**

Pursuant to Fed. R. Civ. Proc. 7(a)(2), Big Lots Stores, Inc. ("BLSI") respond to the numbered paragraphs of the VERIFIED PETITION FOR SPECIAL PROCEEDING AND TURNOVER OF JUDGMENT DEBTOR'S PROPERTY HELD BY GARNISHEE filed by Plaintiff Jackie Tidwell ("Plaintiff") as follows:

JURISDICTION AND VENUE

1. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies those allegations.
2. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies those allegations.

3. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies those allegations.

4. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies those allegations.

5. Admitted.

6. Admitted as to BLSI.

THE PARTIES

7. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies those allegations.

8. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies those allegations.

9. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies those allegations.

10. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies those allegations.

11. Admitted.

SUMMARY OF APPLICATION

12. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies those allegations.

13. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies those allegations.

14. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and therefore denies those allegations.

15. BLSI denies the allegation of paragraph 15 as to BLSI.

STATEMENT OF FACTS

16. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and therefore denies those allegations.

17. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies those allegations.

18. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and therefore denies those allegations.

19. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies those allegations.

20. BLSI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies those allegations.

21. Denied.

22. BLSI admits that paragraph 22 purports to be a restatement of CPLR § 5225(b) for which no response is required.

23. BLSI admits that paragraph 23 purports to be a quote from Koehler v. Bank of Bermuda, 12 N.Y. 3d 533, 540 (N.Y. 2009) for which no response is required.

24. BLSI admits that paragraph 24 purports to be a quote from Koehler v. Bank of Bermuda, 12 N.Y. 3d 533, 541 (N.Y. 2009) for which no response is required.

25. Paragraph 25 is a legal conclusion for which a response is not required. To the extent that a response is required, paragraph 25 is denied as to BLSI.

26. Paragraph 26 is a legal conclusion and/or statement of fact for which a response is not required. To the extent that a response is required, paragraph 26 is denied as to BLSI.

27. Denied as to BLSI.

28. Denied as to BLSI.

29. Paragraph 29 is a legal conclusion and/or statement of fact for which a response is not required. To the extent that a response is required, paragraph 29 is denied as to BLSI.

30. Denied as to BLSI.

31. Denied as to BLSI.

32. Paragraph 32 is a legal conclusion and/or statement of fact for which a response is not required. To the extent that a response is required, paragraph 32 is denied as to BLSI.

AFFIRMATIVE DEFENSES

As its separate affirmative defenses to Plaintiff's claims and allegations, BLSI alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Verified Petition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

BLSI does not now possess, nor has it ever possessed, property owned by or in which the Judgment Debtor, Zhejiang Jiandi Trading & Industrial Co., Ltd. has an interest. Accordingly, Plaintiff cannot be subject to a special proceeding under CPLR §§ 5225(b), 5227 and/or 5228 (or any other statute cited by Plaintiff).

PRAYER FOR RELIEF

WHEREFORE, BLSI requests that this Court enter judgment:

- (a) that Plaintiff take nothing against BLSI by its Verified Petition in this action;
- (b) finding, declaring, and adjudging in favor of BLSI and against Plaintiff, dismissing with prejudice all claims of Plaintiff against BLSI; and
- (c) granting such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

BLSI demand a jury trial on all issues so triable.

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By: s/ Jason S. Oliver
Jason S. Oliver

Attorneys for Big Lots Stores, Inc.

Dated: September 6, 2013
New York, New York

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)
ss.)

JASON S. OLIVER, being duly sworn, deposes and says:

I am an attorney of Baker & Hostetler LLP, attorneys for alleged garnishee Big Lots Stores, Inc. with offices located at 45 Rockefeller Plaza, New York, New York 10111; that I have read the foregoing Answer to Verified Petition and know the contents thereof; that the same is true to my knowledge; and the reason why this verification is made by myself instead of the alleged garnishee is because the alleged garnishee is not located within the County of New York, which is the county where the case was filed.

JASON S. OLIVER

Sworn to before me
this 06th day of September 2013

Notary Public

ROBERTSON D. BECKERLEGGE
Notary Public, State of New York
No. 023E6072597
Qualified in New York County
Commission Expires April 8, 2010

1. *Phragmites* 2. *Scirpus* 3. *Phragmites* 4. *Scirpus* 5. *Phragmites* 6. *Scirpus*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 6, 2013 a true and correct copy of the foregoing was transmitted electronically to the Electronic Filing System of the United States District Court for the Southern District of New York, which is believed to have sent notice of such filing, constituting service of the filed document, on all Filing Users, all of whom are believed to have consented to electronic service.

Executed on September 6, 2013, at New York, New York.

s/ Jason S. Oliver
Jason S. Oliver